

Message Text

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PAGE 01 STATE 242439

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TO AMEMBASSY BERN PRIORITY

AMEMBASSY VIENNA PRIORITY

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E.O. 11652: N/A

TAGS: AMGT, SZ, AU

SUBJECT: BERN LEGAL ATTACHE OFFICE

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1. FOLLOWING IS TEXT OF CLASSIFIED MEMORANDUM BEING SENT
TO M/MO BY EUR/EX: BEGIN TEXT: TO: M/MO - MR. CLAYTON E.
MCMANAWAY - FROM: EUR/EX - JOAN M. CLARK - SUBJECT: BERN
LEGAL ATTACHE OFFICE.

EUR DOES NOT BELIEVE THAT THERE IS AN OVERRIDING NEED TO
MAINTAIN THE PRESENT LEGAL ATTACHE OFFICE AT THE AMERICAN
EMBASSY BERN. -

SWISS WILLINGNESS TO PROVIDE INFORMATION AND ASSISTANCE IS
LIMITED AND STRICTLY DEFINED. IT IS GENERALLY GIVEN ONLY IN
CASES WHICH COULD BE CONSIDERED CRIMINAL UNDER SWISS LAW.
IN SUCH CASES, ASSISTANCE WHICH THE SWISS AUTHORITIES ARE
WILLING TO PROVIDE CAN BE AND IS OBTAINED BY THE EMBASSY'S
CONSULAR OFFICER. THE JUSTICE DEPARTMENT ROUTINELY CHANNELS
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PAGE 02 STATE 242439

A LARGE VOLUME OF REQUESTS FOR ASSISTANCE THROUGH THE

CONSUL AND HAS HIGHLY PRAISED HIS WORK.

THE SWISS ARE NOT WILLING TO PROVIDE INFORMATION (ABOUT BANK ACCOUNTS, COMPANY RECORDS, ETC.) TO THE CONSULAR OFFICER IN CASES NOT CONSIDERED CRIMINAL IN SWITZERLAND, NOTABLY

CASES BROUGHT BY THE SECURITIES AND EXCHANGE COMMISSION. WE HAVE NO INDICATION THAT THE LEGAL ATTACHE HAS BEEN MORE SUCCESSFUL THAN THE CONSUL IN OBTAINING SUCH INFORMATION FROM THE SWISS. SEC ATTORNEYS TELL US THAT THEY DO NOT RECEIVE ANY INFORMATION ON THESE MATTERS WHICH IS DEVELOPED BY THE LEGAL ATTACHE OFFICE.

THE LEGAL ATTACHE AND THE EMBASSY'S CONSULAR OFFICER BOTH DEAL WITH THE SAME OFFICIALS IN THE SWISS FEDERAL DEPARTMENT OF JUSTICE AND POLICE. THE LEGAL ATTACHE IS GENERALLY CONCERNED WITH MATTERS IN THE INVESTIGATIVE STAGE, WHILE THE CONSULAR OFFICER HANDLES MATTERS PENDING BEFORE THE COURTS. WE SEE NO REASON WHY THE CONSULAR OFFICER COULD NOT DEAL WITH ALL ASPECTS OF THESE CASES.

THE SWISS HAVE OCCASIONALLY BEEN SOMEWHAT FLEXIBLE IN APPLYING THEIR LAWS TO COOPERATE WITH US ON AN AD HOC BASIS IN A FEW IMPORTANT CASES -- MOST RECENTLY, THE SEC CASE AGAINST AMERICAN INSTITUTE COUNSELORS. THIS CASE WAS HANDLED ENTIRELY BY THE EMBASSY'S POLITICAL/ECONOMIC COUNSELOR.

WE QUESTION WHETHER THE JUDICIAL ASSISTANCE TREATY WILL RESULT IN A SIGNIFICANTLY GREATER INCREASE IN THE LEGAL ATTACHE'S WORKLOAD. THE TREATY EXTENDS PRESENT PRACTICE ONLY SLIGHTLY IN TERMS OF THE TYPES OF CASES IN WHICH THE SWISS WILL PROVIDE JUDICIAL ASSISTANCE. THE JUSTICE DEPARTMENT WILL HAVE TO LIMIT THE NUMBER OF CASES BROUGHT UNDER THE TREATY TO THAT WHICH SWISS PERSONNEL RESOURCES CAN ABSORB. THE TREATY WILL REPLACE PRESENT AUTOMATIC PROCEDURES BETWEEN THE U.S. AND SWISS FEDERAL JUSTICE DEPARTMENTS. OVER THE LONG TERM, THE TREATY IS EXPECTED TO HELP INHIBIT CRIMINAL UTILIZATION OF THE SWISS BANKING SYSTEM.

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PAGE 03 STATE 242439

IN SUMMARY, WE THINK THAT THE FUNCTIONS OF THE BERN LEGAL ATTACHE OFFICE CAN BE ASSUMED WITHIN THE EXISTING EMBASSY STAFF WITHOUT LOSING ANY OF THE SERVICES IT PROVIDES.
END TEXT.

2. DEPARTMENT WISHES TO RECEIVE ANY COMMENTS BY BERN/
VIENNA NO LATER THAN COB FRIDAY OCTOBER 1. PLEASE RESTRICT

RESPONSE TO EUR CHANNELS. ROBINSON

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